

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DAVID K. PORATH,

Plaintiff,

-v-

CITY OF NEW YORK, DIRECTOR, BELLEVUE
SHELTER SYSTEM, and N.Y.S. PAROLE OFFICER
AKANEME,

Defendants.

CIVIL ACTION NO.: 22 Civ. 1302 (JPC) (SLC)

AMENDED ORDER OF SERVICE

SARAH L. CAVE, United States Magistrate Judge:

Pro se Plaintiff David K. Porath, who is currently incarcerated at Gouverneur Correctional Facility, brings this action under 42 U.S.C. § 1983, alleging that Defendants violated his constitutional rights. (See ECF No. 1 (the “Complaint”)). On February 16, 2022, the Honorable John P. Cronan granted Mr. Porath’s request to proceed without prepayment of fees, that is, in forma pauperis (“IFP”).¹ (ECF No. 4). On March 7, 2022, Judge Cronan issued an order of service directing, inter alia, the Clerk of Court to issue a summons and deliver to the U.S. Marshals Service all paperwork necessary for the Marshals to effect service of the Complaint. (ECF No. 6). On April 14, 2022, prior to service of the Complaint, Mr. Porath filed an amended complaint. (ECF 14 (the “Amended Complaint”)).

DISCUSSION

Because he has been granted permission to proceed IFP, Mr. Porath is entitled to rely on the Court and the U.S. Marshals Service to effect service. Walker v. Schult, 717 F.3d. 119, 123 n.6

¹ Prisoners are not exempt from paying the full filing fee even when they have been granted permission to proceed IFP. See 28 U.S.C. § 1915(b)(1).

(2d Cir. 2013); see also 28 U.S.C. § 1915(d) (“The officers of the court shall issue and serve all process . . . in [IFP] cases.”); Fed. R. Civ. P. 4(c)(3) (the court must order the Marshals Service to serve if the plaintiff is authorized to proceed IFP)).

Although Rule 4(m) of the Federal Rules of Civil Procedure generally requires that the summons and complaint be served within 90 days of the date the complaint is filed, Mr. Porath is proceeding IFP and could not have served the summonses and Amended Complaint until the Court reviewed the Amended Complaint and ordered that summonses be issued. The Court therefore extends the time to serve until 90 days after the date summonses are issued. If the Amended Complaint is not served within that time, Mr. Porath should request an extension of time for service. See Meilleur v. Strong, 682 F.3d 56, 63 (2d Cir. 2012) (holding that it is the plaintiff’s responsibility to request an extension of time for service); see also Murray v. Pataki, 378 F. App’x 50, 52 (2d Cir. 2010) (“As long as the [plaintiff proceeding IFP] provides the information necessary to identify the defendant, the Marshals’ failure to effect service automatically constitutes ‘good cause’ for an extension of time within the meaning of Rule 4(m.”).

To allow Mr. Porath to effect service on Defendants New York City, New York State Parole Officer Akaneme, and the Director of the Bellevue Men’s Shelter through the U.S. Marshals Service, the Clerk of Court is instructed to fill out a U.S. Marshals Service Process Receipt and Return form (“USM-285 form”) for each of these defendants. The Clerk of Court is further instructed to issue summonses and deliver to the Marshals Service all the paperwork necessary for the Marshals Service to effect service upon these defendants.

Mr. Porath must notify the Court in writing if his address changes, and the Court may dismiss the action if Mr. Porath fails to do so.

CONCLUSION

The Clerk of Court is respectfully instructed to issue summonses, complete the USM-285 forms with the addresses for New York City, New York State Parole Officer Akaneme, and the Director of the Bellevue Men's Shelter, and deliver the Amended Complaint (ECF No. 14), and all documents necessary to effect service to the U.S. Marshals Service.

The Clerk of Court is further instructed to mail copies of ECF No. 14 and this Order to Mr. Porath at the address below.

Dated: New York, New York
 May 20, 2022

SO ORDERED.


SARAH L. CAVE
United States Magistrate Judge

Mail to:

David K. Porath
NYSID: 05012770L
DIN#11A2120
Gouverneur C.F.
P.O. Box 480
Gouverneur, NY 13642-0370

DEFENDANTS AND SERVICE ADDRESSES

1. City of New York
100 Church Street
New York, New York 10007
2. Director, Bellevue Men's Shelter
400 East 30th Street
New York, New York 10016
3. Parole Officer Akaneme
82 Lincoln Avenue
Bronx, New York 10454